

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of MARY WESOLOWSKI, a Protected
Person.

ELEANOR KAMENSACK, Conservator of the
Estate of MARY WESOLOWSKI, a Protected
Person,

UNPUBLISHED
May 30, 2000

Petitioner-Appellant,

v

PEGGY GALVIN, IRENE WESOLOWSKI,
DOLORES COREY, LOUIS WESTON and
MARILYN CUSUMANO,

No. 208344
Macomb Probate Court
LC No. 95-143182-CV

Respondents-Appellees.

Before: Zahra, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Petitioner appeals as of right from the probate court's order amending the denial of actual attorney fees. We affirm.

Petitioner retained attorney Trisha J. Arndt to assist her in handling legal affairs in connection with petitioner's appointment as conservator for Mary Wesolowski. Petitioner and Arndt entered into a retainer agreement, agreeing to a retainer fee of \$2,000 and legal services at an hourly rate of \$125. Petitioner submitted an affidavit stating the services provided by Arndt in behalf of the estate. Arndt sought actual attorney fees and costs, totaling \$14,821.81. The probate court denied actual attorney fees, entering an order allowing \$9,166.81 in attorney fees and costs.

The probate court has the discretion to determine the value of disputed attorney fees, and its decision may not be overturned absent a manifest abuse of discretion. *In re O'Neill Estate*, 168 Mich App 540, 543; 425 NW2d 133 (1988). An abuse of discretion cannot be found merely because a reviewing court determines that, had it been presented with the same facts, it would have ruled

differently. Rather, an abuse of discretion will be found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Schoensee v Bennett*, 228 Mich App 305, 314-315; 577 NW2d 915 (1999).

Section 543 of the Revised Probate Code, MCL 700.543; MSA 27.5543, provides:

Without obtaining a court order, a fiduciary of an estate may employ counsel to perform necessary legal services in behalf of the estate and the counsel shall receive reasonable compensation for the legal services.

Pursuant to that statute, counsel for an estate fiduciary is entitled to reasonable compensation for legal services where the services were necessary and were provided in behalf of the estate. *In re Sloan Estate*, 212 Mich App 357, 361; 538 NW2d 47 (1995). When the legal services rendered in behalf of an estate provide a benefit to the estate by either increasing or preserving the estate's assets, those services are compensable. *Id.* at 362. The probate court must determine the reasonable value of fees. To do so, the court must consider the factors listed in MRPC 1.5(a). MCR 8.303(A); *Jordan v Transnational Motors, Inc.*, 212 Mich App 94, 97; 537 NW2d 471 (1995). Those factors are:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

“[T]he probate court must review a petition for attorney fees for reasonableness with an eye toward preservation of the estate's assets for the beneficiaries.” *Sloan, supra* at 364, citing *In re Krueger Estate*, 176 Mich App 241; 438 NW2d 898 (1989). The person seeking compensation bears the burden of proving the reasonableness of the fees. *O'Neill, supra* at 543.

In the present case, the record suggests the probate court considered the proper factors in determining a reasonable attorney fee amount. The probate court found counsel's \$125 hourly fee

reasonable for most services, but noted that the services rendered by counsel were relatively simple. Consequently, it found the overall claimed attorney fee amount of more than \$14,000 to be excessive and eliminated some of the claimed fees. The record before us simply does not support the conclusion that the probate court abused its discretion in rendering the decision on the attorney fees.

Petitioner contends that the fees were not excessive and argues that the time spent on these matters was reasonable and necessary. However, petitioner does not discuss in detail how the court abused its discretion in concluding that the amount of time spent on the services was excessive. While she challenges the court's decision as to several claimed fees for the preparation of certain documents, she has not provided this Court with copies of those documents to allow it to adequately review the trial court's assessment of those services. Petitioner has the burden of presenting this Court with an adequate record upon which to review her claims. *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540; 506 NW2d 890 (1993).

Petitioner also challenges the probate court's conclusion that the amounts billed by counsel for her conferences with the conservator in September 1995 and February 1996, and her appearance in court on December 8, 1995, were excessive. Petitioner persuasively argues that the time spent by counsel on these matters was reasonable. However, petitioner cannot prevail on such a showing. Rather, petitioner must present evidence that the probate court's finding that the attorney fees charged for these matters amounts to an abuse of discretion. *Schoensee, supra*. Based on the record and arguments of petitioner, we cannot conclude that the probate court abused its discretion.

The probate court also found that, on two occasions, the services provided by counsel to the conservator were services that could have been performed by the conservator without the assistance of legal counsel. The court allowed counsel to be compensated for these services at a rate of \$40 an hour, an amount the court determined could have been charged by the fiduciary. Under the circumstances through which those services were provided, we agree with the probate court's decision.

Next, petitioner challenges the probate court's conclusion that certain hours were improperly billed as "fees for fees." This Court has described "fees for fees" claims as claims brought in behalf of the attorney seeking those fees. *Sloan, supra* at 363. In *Sloan*, this Court held that such fees do not benefit the estate because they do not increase or preserve the estate's assets. *Id.* The estate may not be diminished to pay the ordinary fees and costs incurred in establishing and defending a fee petition. *Id.* This Court concluded that § 543 of the Revised Probate Code does not permit compensation for ordinary fees and costs arising from the need to establish and defend a petition for attorney fees. *Id.* at 364. Here, petitioner claims that the billed amounts are not for preparation of the attorney fee bill, but instead, were incurred when counsel gave notice to interested parties of payment for services by an attorney pursuant to MCR 8.303(E). While the notices may have been prepared according to court rule, they clearly were prepared by counsel to establish and defend her petition for attorney fees. Therefore, under *Sloan, supra*, counsel may not recover the fees associated with those services.

Finally, petitioner argues that the probate court abused its discretion in reducing attorney fees by considering evidence and information outside the record. We disagree. The record indicates that the probate court clearly considered counsel's itemized bill line-by-line and considered the circumstances of

the case. There is no support in the record for the claim that the court went outside of the record in determining the reasonableness of the fees claimed by counsel.

Affirmed.

/s/ Brian K. Zahra

/s/ Joel P. Hoekstra